

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

March 30, 2012

- I. **ATTENDANCE** – The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on March 30, 2012. Members present were Chairman Louis Stout, Jan Meyer, Noel White, James Griggs and Thomas Glover. Members Kathy Moore and Barry Stumbo were absent. Others present were Rochelle Boland, Law Department; Chuck Saylor, Division of Engineering; Jerry Hancock, Parks and Recreation; and James Gallimore, Division of Traffic Engineering. Staff members in attendance were Bill Sallee, Jimmy Emmons, Wanda Howard and Jim Marx.

- II. **APPROVAL OF MINUTES** – The Chairman announced that there were no minutes of the previous meeting available for consideration at this time.

At this point, Chairman Stout asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn in.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **V-2012-8: THOROUGHbred HOMES, LLC** - appeals for a variance to reduce the required front yard setback from 30 feet to 22 feet in order to allow a second-story addition to extend over the existing front porch in a Two-Family Residential (R-2) zone, on property located at 1203 Fincastle Road (Council District 5).

The Staff Recommends: Disapproval, for the following reasons:

1. Justification has not been provided that specifically addresses and supports that this request will not alter the character of the general vicinity. As proposed, approval of this variance will alter the immediate character of the neighborhood because the front yards, along with the fact that a majority of the homes have a one-story covered front porch, are some of the fundamental characteristics that give this neighborhood much of its form.
2. The applicant has not provided a justification indicating that there are any special circumstances that apply to this property that do not generally apply to others in the surrounding neighborhood. Although the shape of this lot is unusual compared to most lots in Fayette County, it is actually a typical lot in the Ashland Park neighborhood.
3. If additional living space is desired, a rear addition would not likely be as character altering with this architecturally established neighborhood. This deep lot could accommodate such an addition.

Mr. Emmons stated that the staff had received a letter from the applicant withdrawing this variance request. However, since this was a continued item from last month, it would be best for the Board to take an action accepting the withdrawal of this case.

Action – A motion was made by Mr. Griggs, seconded by Ms. White, and carried unanimously (Moore, Stumbo absent) to accept the withdrawal of **V-2012-8: THOROUGHbred HOMES, LLC**.

- b. **CV-2012-11: TOWNES ENTERTAINMENT, LLC** - appeals for a conditional use permit for a restaurant with live entertainment; and variances to 1) reduce the required 100-foot setback from a residential zone to 0 feet, and 2) reduce the required parking by 50% in a Neighborhood Business (B-1) zone, within the defined Infill & Redevelopment Area, on property located at 122 W. Maxwell Street (Council District 3).

The Staff Recommended: Postponement, for the following reasons:

1. Additional details are needed regarding: (1) required off-street parking for the proposed use, which will necessitate submittal of an indoor and outdoor seating count, along with a calculation of the square footage of the building that will be used for the proposed activities; and (2) an assessment of required parking for other occupants of the building. Also a description is needed of how the available parking behind the building will be shared with those occupants and any other users in the area (e.g., Two Keys Tavern) that may have (at some point) been authorized to use that accessory parking lot.
2. There are a number of residential properties in close proximity to the subject property. Alternative music venues and operational considerations should be explored by the appellant that might serve to reduce the potential for a bar/grill with live entertainment to adversely affect those properties.

Mr. Emmons informed the Board that the applicant had sent the staff an e-mail request, asking for a one-month postponement to the April 27th meeting. He said the planning staff has also contacted the neighborhood associations in this case, to let them know of the applicant's request for a postponement.

Chairman Stout asked if there was anyone present in opposition, to which there was a reply from an audience member. Chairman Stout asked the gentleman if he understood that the applicant has asked for a postponement. The gentleman replied that was fine with him.

Action - A motion was made by Ms. Meyer, seconded by Mr. Griggs and carried unanimously (Moore, Stumbo absent) to postpone **CV-2012-11: TOWNES ENTERTAINMENT, LLC** until the April 27th meeting.

- c. **V-2012-16: MARY MARGARET BELL** - appeals for a variance to reduce the required side yard from 8 feet to 1.5 feet in order to construct a detached garage in a Single Family Residential/Neighborhood Character Overlay (R-1C/ND-1) zone, on property located at 377 Colony Boulevard (Council District 5).

The Staff Recommends: Approval of a variance to 3 feet for the accessory structure, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The detached garage will be situated at the end of an existing driveway, near the rear of the main structure. Detached garages at the rear of a property are common in the Chevy Chase neighborhood.
2. The square shape of this corner lot, resulting in an unusually shallow lot for Colony Boulevard, is a special circumstance that contributes to justifying the need for the requested variance.
3. Strict application of the 8' side yard setback requirement would force the appellant to place the detached garage at an undesirable or a less accessible location on the lot or to forego a garage for this property altogether.
4. The lot lines and the location of the house and driveway were already in place when the applicant purchased the property. This variance request is not a result of her actions since the adoption of the Zoning Ordinance, and there is no intent to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

- a. The detached garage shall be constructed in accordance with the submitted application and site plan, except that the garage shall be a minimum of 3' from the property line, and the resulting shift of driveway pavement shall be shown prior to issuance of a building permit.
- b. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
- c. A gutter system will be installed to direct storm water runoff away from all adjoining properties, to the approval of the Division of Engineering.

Chairman Stout called the Board's attention to the change in Condition #3, which the staff was asked to clarify.

Mr. Emmons said the staff recommended a slight modification to Condition #3, to change the word

“gutter” to “storm water drainage”. The amended condition was shown on the overhead. He noted that this was acceptable to both the applicant and the neighboring property owner.

Following clarification of this condition, the Board proceeded to hear the first case on the agenda without opposition.

2. No Discussion Items - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
- a. **V-2012-15: JAMES P. ARNOLD** - appeals for a variance to reduce the required setback along both Athens-Boonesboro and McCalls Mill Roads from 50 feet to 35 feet in the Agricultural Rural (A-R) zone, on property located at 7210 Athens-Boonesboro Road (Council District 12).

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of this rural area. Several nearby residences are located closer to Athens-Boonesboro Road and McCalls Mill Road than the proposed residence.
2. The irregular shape of the lot, the existing portion of the home to remain, and the fact that this lot is subject to front yard limits from both Athens-Boonesboro Road and McCalls Mill Road, are special circumstances that contribute significantly to justifying the requested front yard reductions.
3. Strict application of the Zoning Ordinance would force the appellant to construct a new residence very close to the southerly side property line, in an area that is heavily wooded and abandon the portion of the existing residence that he wishes to retain.
4. The appellant is making a reasonable effort to site a reconstructed residence at a location that reduces the existing non-conformities of this residential structure. This effort should not be interpreted in any way as an attempt to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

- a. The residence shall be constructed in accordance with the submitted application and site plan.
- b. All necessary permits shall be obtained from the Division Building Inspection prior to construction.

Chairman Stout asked whether there were objectors present for the subject appeal. There was no response.

Representation – Mr. Earl Cooper, attorney, was present representing the appellant, who also was present. Mr. Cooper indicated that they had read, understood and agreed to abide by the conditions for approval.

Mr. Griggs asked a question regarding the front façade, the two car garage and the entrance on the side. He asked if the applicant had considered bringing the driveway around and having a garage entrance on the back. Mr. Arnold responded that he had not considered that option, noting his concern that the existing topography would make it more difficult than as proposed.

Mr. Griggs said that he wouldn't want to direct the work to any great degree, and he appreciated what they were trying to do here. He said if they hadn't considered a rear entrance garage door, it might look better from the road, given that these are scenic by-ways and the house will be so close to the road. Mr. Arnold responded that that was a good point, and they would likely consider doing that. Mr. Griggs asked Mr. Arnold to just take a look at that possibility.

Action – A motion was made by Ms. Meyer, seconded by Ms. White, and carried unanimously (Moore, Stumbo absent) to approve **V-2012-15: JAMES P. ARNOLD** (a variance to reduce the required setback along both Athens-Boonesboro and McCalls Mill Roads from 50 feet to 35 feet in the Agricultural Rural (A-R) zone, on property located at 7210 Athens-Boonesboro Road) as recommended by the staff and subject to the two conditions recommended by the staff.

After the Board's action, Mr. Sallee stated that he was just handed letters regarding this case. Chairman Stout asked if the letters were in opposition. Mr. Sallee stated that he would distribute the letters to the Board, because they did look like letters of concern.

Mr. Emmons addressed the Board, stating that one of the letters indicated that they did not receive a direct notice for this application; however, the staff confirmed that notice to Ms. Dana Denniston at 7356 Athens-Boonesboro Road was mailed as a part of the required notice. Further, the staff has not received a return on the notice letter, for the record.

Chairman Stout noted that the Board has already taken action on this item; and it was his feeling that the vote would stand as taken. Mr. Griggs concurred but asked for comment from counsel.

Ms. Boland responded that any vote that's taken can have a motion made to rescind that vote and to reconsider it, as long as the member making the motion was on the prevailing side of the vote. If the record will show that you have reviewed those documents and did not feel that there is any reason to make that motion, then that should be sufficient as long as they were considered.

Chairman Stout asked the Board if anyone wished to make a motion to rescind the previous vote after reviewing the letter(s). There was no such motion.

- b. **V-2012-16: MARY MARGARET BELL** - appeals for a variance to reduce the required side yard from 8 feet to 1.5 feet in order to construct a detached garage in a Single Family Residential/Neighborhood Character Overlay (R-1C/ND-1) zone, on property located at 377 Colony Boulevard (Council District 5).

The Staff Recommends: Approval of a variance to 3 feet for the accessory structure, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The detached garage will be situated at the end of an existing driveway, near the rear of the main structure. Detached garages at the rear of a property are common in the Chevy Chase neighborhood.
2. The square shape of this corner lot, resulting in an unusually shallow lot for Colony Boulevard, is a special circumstance that contributes to justifying the need for the requested variance.
3. Strict application of the 8' side yard setback requirement would force the appellant to place the detached garage at an undesirable or a less accessible location on the lot or to forego a garage for this property altogether.
4. The lot lines and the location of the house and driveway were already in place when the applicant purchased the property. This variance request is not a result of her actions since the adoption of the Zoning Ordinance, and there is no intent to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

- a. The detached garage shall be constructed in accordance with the submitted application and site plan, except that the garage shall be a minimum of 3' from the property line, and the resulting shift of driveway pavement shall be shown prior to issuance of a building permit.
- b. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
- c. A gutter system will be installed to direct storm water runoff away from all adjoining properties, to the approval of the Division of Engineering.

Chairman Stout asked whether there were objectors present for the subject appeal. There was no response.

Representation – Mr. Greg Padgett, with Padgett Construction, was present on the appellant's behalf. He indicated that he had read, understood the recommendation and would abide by the conditions for approval, including the amendment of Condition #3 as noted earlier.

Mr. Emmons circulated all the communications from neighbors that the staff has received.

Action – A motion was made by Ms. White, seconded by Mr. Glover (noting the modified condition),

and carried unanimously (Moore, Stumbo absent) to approve **V-2012-16: MARY MARGARET BELL** (appeals for a variance to reduce the required side yard from 8 feet to 1.5 feet in order to construct a detached garage in a Single Family Residential/Neighborhood Character Overlay (R-1C/ND-1) zone, on property located at 377 Colony Boulevard) as recommended by the staff and subject to the three conditions recommended by the staff.

Mr. Emmons clarified that the requested variance was to 1.5 feet, but the staff had recommended 3 feet, which the applicant agreed to.

Action – A motion was made by Ms. White to correct the previous motion to approve a variance to 3' with the amended condition, seconded by Mr. Glover, and carried unanimously (Moore, Stumbo absent).

- c. **V-2012-17: ANDERSON CAMPUS RENTAL PROPERTIES** - appeals for a variance to reduce the side setback along Edwards Avenue from 18 feet to 3 feet in order to construct a residence in a Single Family Residential (R-1D) zone, on property located at 341 American Avenue (Council District 3).

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Not granting the requested variance will result in the lot not being buildable.
2. The extremely narrow width of this corner lot, and the fact that other residential corner lots in this neighborhood have similar side street side yards constitute special circumstances that contribute to justifying the requested variances.
3. Strict application of the setback requirement would result in only 4' of buildable area, essentially making this lot unbuildable.
4. The requested variance is an attempt to develop a residence that is still compatible with the existing single-family residences in the neighborhood. Approving the requested variance will also help to maintain the compatibility standard of Article 15-7 of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

- a. The home shall be constructed in accordance with the submitted application and site plan, except as required below (Condition #3).
- b. All necessary permits shall be obtained from the Division Building Inspection prior to construction.
- b. A 10' wide driveway and at least one, but not more than two parking spaces will be installed at the rear of the property off of Edward Avenue, with the design to be reviewed and approved by the Division of Traffic Engineering prior to issuance of a building permit.

Chairman Stout asked whether there were objectors present for the subject appeal. There was no response.

Representation – Mr. John Strom, with Anderson Communities, was present on the appellant's behalf. He indicated that he had read, understood and would abide by the conditions for approval.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried unanimously (Moore, Stumbo absent) to approve **V-2012-17: ANDERSON CAMPUS RENTAL PROPERTIES** (appeals for a variance to reduce the side setback along Edward Avenue from 18 feet to 3 feet in order to construct a residence in a Single Family Residential (R-1D) zone, on property located at 341 American Avenue) as recommended by the staff and subject to the three conditions recommended by the staff.

After the Board's action, a gentleman wished to speak, stating he had questions about this case. Chairman Stout asked the Law Department for an opinion on this matter.

Ms. Boland said the Board could go ahead and hear what the gentleman had to say, and it would be the same situation as the last case - i.e., if the Board chose to do so, they could determine whether to make a motion to rescind the previous motion.

At this time Chairman Stout asked the gentleman to come forward.

Opposition - Mr. Jerry Ginter, 337 American Avenue, was present. Mr. Ginter stated that he lives right next door to the subject property and would like to know where the house is going to be located; and if it is going to be three feet from his house or close to the fence.

Chairman Stout asked for someone on staff to explain to the gentleman what was being requested.

Mr. Ginter said that he was told he could direct questions to the people that were building the house.

Mr. Emmons indicated that the site plans were up on the screen, explaining that the entire lot is 25 feet wide, and the applicant is proposing the house to be three feet off the property line, which is the minimum side yard in this instance.

Mr. Ginter asked if the back door will be in the back or on the side. Mr. Emmons stated that the applicant said the back door will be on the Edwards Avenue side of the house. Mr. Ginter then asked where they are going to park. Mr. Emmons said that the applicant is proposing parking that would be behind the house and access would be from Edwards Avenue, essentially behind Mr. Ginter's solid fence.

Mr. Ginter asked how far back from the fence, because he did not want them to hit the fence when they park back there. Mr. Emmons replied that what the applicant was showing was coming off of Edwards Avenue and parking in the two parking places. The spaces would be very close to the property line, but the conditions of approval that the Board passed had the design of those parking spaces to be reviewed and approved by the Division of Traffic Engineering prior to a building permit. Therefore, the Traffic Engineer will be able to look at that.

At this time, Chairman Stout asked if he could make a request to avoid any problems that this be done by Traffic Engineering to assist this gentleman's concerns.

Mr. Gallimore, stated that they would try to do what they could with all the conditions that were approved by the Board.

Mr. Emmons said the condition of approval read that there would be a minimum of one parking space and a maximum of two; so if they're not able to fit both parking spaces on the property without causing a problem, they could provide a single parking space for this single family dwelling unit.

Chairman Stout said that he understood this gentleman's concern relative to his property, and he just wanted to make sure that even though they had approved this, the developers understood that there could be some type of interference if they're not very careful.

Mr. Strom replied that the developer would be happy to work with the Division of Traffic Engineering to make sure that this is done properly and take Mr. Ginter's concerns into consideration.

Chairman Stout asked Mr. Ginter if this was alright with him and he said yes, but he had another question he would like to ask. He asked who would be the owner of this property. Mr. Strom responded that Anderson Campus Rental will own the property.

Mr. Ginter went on to say that his biggest question is when they do rent the property, if they are going to keep the trash picked up, like these other rental property owners on American Avenue. He said other property owners do not pick up their trash and it blows into his yard, which is the biggest problem with these rental properties. The rental property owners will not make sure the trash is picked up and placed in the herbies; and when the herbies blow over, the tenants don't pick up the trash, which blows up and down the street all the time. He asked if the owner is planning to pick up the trash.

Chairman Stout replied that he did not know if he was able to address that issue or not. He thought that should be directed to the city authorities and not to the developers.

Chairman Stout asked if any staff could provide assistance in this case relative to the parking situation; and if so, then please extend it to this gentleman if at all possible.

- d. **V-2012-18: SETZER INVESTMENTS NO. 5, LLC** - appeals for a variance to eliminate the required screening around an outdoor storage area in a Light Industrial (I-1) zone, on property located at 1133 Industry Road (Council District 6).

The Staff Recommends: Approval of the requested landscape/screening variance, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety, welfare, or the character of the area. The property where the outdoor storage area is located is generally bounded by existing fencing or thick vegetative screening, with the only exception of the area along 1105 Eastland Parkway that is under the same ownership and the area near the entrance to Industry Road.
2. The prior use of this outdoor storage area, the ownership of the adjacent property, the lack of visibility from the right-of-way, and the heavy screening along the railroad to the north of the subject property are special circumstances that contribute to justifying the elimination of the fencing requirement around the outdoor storage area.
3. Strict application of the Zoning Ordinance would force the appellant to place a fence along the southwest side property line, where such a structure would interfere with the operation of the business at 1105 Eastland Parkway.
4. The circumstances surrounding this variance request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance in 1983, as the existing conditions have largely been unchanged since that time.

This recommendation of approval is made subject to the following conditions:

- a. The property shall be developed in accordance with the approved site plan, or as amended by the Planning Commission on a final development plan.
- b. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior the issuance of a certificate of occupancy for the proposed use.
- c. The fence and gate near the entrance of the property from Industry Road will have mesh panels installed to meet the opacity requirements of the Zoning Ordinance, as approved by the Division of Building Inspection.

Chairman Stout asked whether there were objectors present for the subject appeal. There was no response.

Representation – Mr. Jason Banks, with Banks Engineering, was present on the appellant's behalf. He indicated that they had read, understood and agreed to abide by the conditions for approval.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Moore, Stumbo absent) to approve **V-2012-18: SETZER INVESTMENTS NO. 5, LLC** (appeals for a variance to eliminate the required screening around an outdoor storage area in a Light Industrial (I-1) zone, on property located at 1133 Industry Road) as recommended by the staff and subject to the three conditions as outlined by the staff.

- e. **V-2012-20: MIKE SCHMELING** - appeals for a variance to reduce the required setback along an alley from 7.5 feet to 2.5 feet to accommodate an addition to a garage in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, on property located at 616 West Short Street (Council District 2).

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The detached garage will be situated along Klair Alley, similar to other garages and accessory structures. Detached garages at the rear of properties are common in the Historic Western Suburb Neighborhood.
2. The existing development pattern of similar garages along Klair Alley is a special circumstance that contributes to justifying the need for the requested variance.
3. Strict application of the 7.5-foot setback requirement would force the appellant to forego the addition to the garage for this property. Without the requested variance, the garage addition would not be feasible, as it would not allow an extension of the garage to make it usable for vehicular parking.

4. The 16-foot-deep garage was existing when the appellant purchased the property. He has recently been able to acquire a small parcel from the neighboring property at 620 W. Short Street, which now allows for the possibility of expanding the structure. This requested variance should not be construed in any way as a circumvention of the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

- a. The detached garage shall be constructed in accordance with the submitted application and site plan.
- b. All necessary permits shall be obtained from the Division Building Inspection prior to construction, based on a Certificate of Appropriateness from the Division of Historic Preservation.

Chairman Stout asked whether there were objectors present for the subject appeal. There was no response.

Representation – Ms. Lynn Pedigo was present on the appellant's behalf. She indicated that they had read, understood and agreed to abide by the conditions for approval.

Action – A motion was made by Ms. Meyer, seconded by Ms. White, and carried unanimously (Moore, Stumbo absent) to approve **V-2012-20: MIKE SCHMELING** (appeals for a variance to reduce the required setback along an alley from 7.5 feet to 2.5 feet to accommodate an addition to a garage in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, on property located at 616 West Short Street) as recommended by the staff and subject to the two conditions as outlined by the staff.

- f. **C-2012-10: LORLEETA MUNDY** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1D) zone, on property located at 2832 Winter Garden (Council District 7).

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street and on-street parking is available for this use. A large fenced outdoor play area will be provided. Noise and other disturbances are not anticipated, as care for the twelve children will only be provided during daytime hours; and after 6:00 PM, no more than six children will be present.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

- a. Child care shall be provided in accordance with the submitted application, and an amended site plan indicating full enclosure of the outdoor play area with suitable fencing.
- b. Care for up to 12 children shall be limited to the hours of 6:00 AM to 6:00 PM; care for up to 6 children shall be allowed from 6:00 PM to Midnight, throughout the week.
- c. All necessary permits, including issuance of an occupancy certificate, shall be obtained from the Divisions of Planning and Building Inspection prior to beginning child care for more than six (6) children activities at this location.
- d. The facility shall at all times operate in compliance with regulations of the Kentucky Cabinet for Health and Family Services.
- e. This conditional use shall become null and void should the appellant no longer reside at this location.

Chairman Stout asked whether there were objectors present for the subject appeal. There was no response,

Mr. Emmons informed the Board that the staff did receive one letter of opposition which was circulated to the Board.

Representation – Ms. Lorleeta Mundy, appellant, was present. She indicated that she had read, understood and would abide by the conditions for approval.

Chairman Stout asked if Ms. Mundy knew why any of the neighbors would be in opposition to this.

Ms. Mundy replied that she had not read the letter, but was aware of the address, which is across the street from her property.

Chairman Stout asked Ms. Mundy if she had already applied for licenses and approval. She responded that she is as of right now, a certified provider.

Mr. Griggs said that the letter was about noise and traffic and asked Ms. Mundy if she understood the limited hours for the application she was applying for at this time.

Ms. Mundy replied in the affirmative and addressed concerns about traffic. She said that she provides transportation, so there are only three or four parents who drop off and pick up their children; and she had allotted places for them to use in her driveway.

Mr. Griggs asked if it was okay to let her know who this letter came from. He suggested talking with this neighbor. Ms. Mundy said she was aware of the address, and that it's a neighbor that's across the street and a house down from her. Mr. Griggs said that the address is 2829, but he did not want to say the name over the microphone. Ms. Mundy said that she would go over and introduce herself, which Mr. Griggs thought was a good idea.

Chairman Stout said that Mr. Griggs was providing some solid advice because the Board has dealt with these child care centers before, and people are concerned about traffic and about noise. He said that sometimes it is better to let the people know who you are and what you are trying to do to ease their concerns.

Action - A motion was made by Ms. White, seconded by Mr. Griggs, and carried unanimously (Moore, Stumbo absent) to approve **C-2012-10: LORLEETA MUNDY** (appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1D) zone, on property located at 2832 Winter Garden) as recommended by the staff and subject to the five conditions recommended by the staff.

- g. **C-2012-12: THE BAPTIST CHURCH AT ANDOVER** - appeals for a conditional use permit to expand the church (education center) in an Agricultural Urban (A-U) zone, on property located at 3330 Todds Road (Council District 7).

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the location of the proposed addition is not readily visible, and there is adequate off-street parking for the use of the new education building.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

- a. The site shall be developed in accordance with the submitted site plan.
- b. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy of the building.
- c. Any gaps in the existing tree line along the perimeter of the property will be replanted with appropriate tree species and/or shrubs, as approved by the Landscape Examiner. Otherwise, the vehicular use screening of the parking lot, required by Article 18 of the Zoning Ordinance, is to be installed prior to the issuance of an Occupancy Permit.

Chairman Stout asked whether there were objectors present for the subject appeal. There was no response.

Representation – Mr. Tom Lambdin, with Midwest Engineering, was present on the appellant's behalf. He indicated that he had read, understood and agreed to abide by the conditions for approval.

Action - A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Moore, Stumbo absent) to approve **C-2012-12: THE BAPTIST CHURCH AT ANDOVER** (appeals for a conditional use permit to expand the church (education center) in an Agricultural Urban (A-U) zone, on property located at 3330 Todds Road) for the reasons recommended by the staff and subject to the three conditions recommended by the staff.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2012-13: GARI & STEPHANIE MAYBRIER** - appeal for a variance to reduce the side setback along Nakomi Drive from 40 feet to 19 feet in order to construct a carport in a Single Family Residential (R-1B) zone, on property located at 644 Nakomi Drive (Council District 10).

The Staff Recommends: Disapproval, for the following reasons:

- a. The applicant has not provided sufficient justification related to special circumstances that might apply to this property and that do not generally apply to other properties in the neighborhood.
- b. There are no other properties in this subdivision that have an accessory structure in front of the building line.
- c. There is adequate room on this lot for the applicant to move the carport that would be behind the garage, and still be accessed off the secondary driveway.

Mr. Emmons told the Chairman that the staff had received one letter regarding this request and gave it to the Board.

Representation - Mrs. Stephanie and Mr. Gari Maybrier, appellants, were present.

Chairman Stout noted that the staff has recommended disapproval and has given three reasons as to why. He told the Maybriers that they are here to present and defend their case.

At this time, Chairman Stout said that he would let the staff give there rationale as to why this was recommended for disapproval.

Staff Presentation - Mr. Emmons oriented the Board to the property located at 644 Nakomi Dr. using aerial photography. The applicants are requesting a variance from a 40-foot setback to a 19-foot setback. He noted that there are two driveways on the subject property. The first one accesses Nakomi Drive and has a driveway that goes to a two-car garage, of which there were photos. A second access to Nakomi Drive accesses a shed. It is off of this second driveway where the carport is requested to remain.

Mr. Emmons then presented photos of the property, including the placement of the carport, which demonstrated that the carport could be moved on the property to be compliant with the Zoning Ordinance. By moving the carport to the rear of the garage behind the fence, in the rear yard, it would be able to meet the 40- foot setback and still access the existing driveway, although if the garage were moved to this location they would either need to get out of the car to open the gate to access the carport or move the fence accordingly.

He said that, in reviewing the subject property, the staff could not find any justification or any special circumstances for this property that do not generally apply to the remainder of the neighborhood. The property is zoned R-1B, which is one of the larger lot single family residential zones in Fayette County. Staff

could not find any special circumstances for the subject property that would actually pertain to this property that did not pertain to other properties in this general subdivision. Additionally, staff also found that approving this variance would actually render the property out of character with the other properties in the neighborhood. Because of a lack of sufficient justification for the request, staff has recommended disapproval for the three reasons listed in the staff report and on the agenda.

Mr. Griggs asked the staff about the second driveway that is graveled, noting that it comes off the street and then part of it is concrete as it gets closer to the shed in the back, which is in the side street side yard. He asked if there are any requirements about paved off-street parking in a side street side yard.

Mr. Emmons replied that the Zoning Ordinance stipulates that the required parking spaces be behind the building line, but additional parking spaces can be in front of the building line if they are appropriately paved and screened. Mr. Griggs replied that he thinks they are appropriately screened, as there's a thick hedge all the way down the side of the property.

Mr. Emmons responded that the staff has no problem with the existing driveway or the shed that is in the rear. This variance request was for the carport that was installed along side of the garage.

Mr. Griggs asked staff how the carport was discovered. Mr. Emmons replied that he thought there was a complaint. The property owners chose to pursue a variance.

Mr. Glover stated that he saw the neighborhood character by looking at this aerial photograph and requested that the picture be zoomed in closer on the property itself. He noted that this picture does not show the carport. Mr. Emmons replied that the carport was installed after the 2010 aerial photo.

At this time, Chairman Stout asked to hear the appellants' comments.

Representation - Mrs. Maybrier asked that a photo be shown on the overhead and thanked everyone for letting them be there to request approval for the carport. She said they had read the case report, they do understand, and that there is room behind the house; however, it's a less desirable location because of the existing entrance to the garage on the side of the house where the carport is. If they moved the carport to the rear yard, they would have to move the fence, and would have to level the yard a little, due to the topography. They would also have to put in another parking space. There are flower beds in the rear yard that would have to be taken out. They concluded by saying that this variance doesn't affect the public health, safety, welfare, or character of the area.

Mr. Griggs pointed out that where they have it located now it cannot be seen from inside the house, but the neighbors can see it from their windows.

Mr. Maybrier said he had talked to some neighbors (about five or six houses each way), and they think it looks fine.

Mrs. Maybrier said she understood what the Board was saying, but there are other things that are unappealing about the neighbors' homes as well.

Chairman Stout asked Zoning Enforcement if there should have been an approval for this addition in this situation.

Mr. Marx said they should have gotten a permit and they did not.

Mrs. Maybrier said that they were unaware that placement of this carport required a permit.

Ms. Meyer expressed concern about setting a precedent, as there were no other properties with similar structures. Ms. Meyer went on to give her opinion that if she were a neighbor, she would not want to be looking at that.

Mr. Maybrier said if they thought the carport was not attractive, they would not have put it up, noting that everybody has a different opinion; but all of their friends (that live on the curve, which is about six houses) think that it looks great. It was their opinion that theirs was the nicest house on the street. Mrs. Maybrier said there is no other lot like theirs, as no one else has a second access driveway that goes to the back of

the property. She said it was just a perfect place to put the carport, in their opinion, adding that she would rather see the carport sited there than behind the house.

Mr. Glover asked if the side door is the principal entrance to the garage. Mrs. Maybrier replied that it was not. Mr. Glover verified that there's another entrance to the garage on the front side of the house and that the garage is a two-car garage. He asked if the carport would accommodate a third car, to which Mr. Maybrier responded that it would.

Mr. Maybrier clarified that even if the carport is disapproved, they still plan to park the car in that location.

Chairman Stout said sometimes when an applicant makes a request, and it's found out that they have done something that shouldn't have been done, it is difficult for this Board to support additions that the staff is not recommending be approved. He added that the Board should not sit in judgment as to whether or not it looks good or bad, noting that there was not a similar situation anywhere in the neighborhood.

Chairman Stout stated that the staff has provided three solid reasons why this should not be approved, and noted his agreement. He said that the applicants had not provided a strong justification as to why the carport should be allowed to remain.

Mr. Maybrier asked the Chairman to repeat the three reasons for disapproval. Chairman Stout did so.

Mr. Griggs said he would like to add just one thing. He said that, as the Board, they have seen neighbors cringe at what's being done around them and they won't come forward because relationships are too valuable. He said that if he was a neighbor and cared about them, he would, like their neighbors, say it's lovely, too; although that would not be his true feelings about the carport.

Mr. Maybrier restated that the neighbors would have come down to the meeting but everybody had to work. Mr. Griggs repeated that it is often hard for neighbors to be truthful sometimes about how they feel.

Mr. Maybrier said that it was just to protect the car he had bought for his wife, which is a convertible that needs to be protected from the elements, adding that it's not there to upset anyone – just to protect their investment.

Mrs. Maybrier said that she didn't know if this was true; but they were told that they could still continue to park the car in the graveled area, (parking space), but just could not have the carport there to protect their investment. It was her opinion that that was worse – and like they were parking the car in the yard. She asked why they wouldn't be granted an allowance, to at least make it an actual parking structure. Mr. Maybrier asked if he could build a garage there.

Chairman Stout told Mr. Maybrier that he would have to seek a permit to do that, and that the Board was unable to address that. It would have to be submitted to the staff and staff would have to submit it to the Board. Building Inspection would have to be involved, and it was not something the Board could respond to without going through the proper procedures.

Mr. Maybrier asked how he could get a permit or find out if he could build one.

Chairman Stout said that someone, such as a designer, should look at the property and investigate to see if it's legal.

Mr. Griggs told Mr. Maybrier the primary reason that this is being turned down is because it is in front of the building line. He said if Mr. Maybrier was asking to build a structure in front of the building line, he would be faced with the same arguments as today. He added that the Maybriers were not being penalized because it's already there, although the Board doesn't like that; but it's because the carport is in front of the building line, and there are no other examples in the neighborhood of buildings over the building line.

Action - A motion was made by Mr. Glover, seconded by Ms. White, and carried unanimously (Moore, Stumbo absent) to disapprove **V-2012-13: GARI & STEPHANIE MAYBRIER** (appeal for a variance to reduce the side setback along Nakomi Drive from 40 feet to 19 feet in order to construct a carport in a Single Family Residential (R-1B) zone, on property located at 644 Nakomi Drive) as recommended by the staff.

2. **V-2012-19: STEVE PERRY** - appeals for variances to: 1) reduce the required project exterior yard from 20 feet to 6 feet; 2) reduce the minimum required open space from 20% to 18%; and 3) to increase the maximum allowable parking from 50 to 60 spaces in a High Density Apartment (R-4) zone, within the defined Infill & Redevelopment Area, on properties located at 301 and 313 Burley Avenue (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The project is surrounded by non-residential uses, and the requested variances will promote new development that is compatible with the existing neighborhood.
- b. The surrounding non-residential land uses, the property's close proximity to a new public park, and the need to accommodate student parking in this neighborhood are special circumstances that contribute to justifying the requested variances.
- c. Strict application of the setback, open space, and maximum parking requirements would force the appellant to redesign this townhouse project, which may or may not result in a better design, and would likely result in a design that would have a negative effect on the character of the surrounding neighborhood.
- d. The conflicts with the Zoning Ordinance are an attempt to develop townhouses that are more compatible with the existing single-family residences in the neighborhood. Approving the requested variances will be in keeping with the compatibility standard of Article 15-7 of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The townhouse project shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission on the approved final development plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.

Representation – Mr. Rory Kahly, with EA Partners, was present on the appellant's behalf.

Chairman Stout informed Mr. Kahly that there was a gentleman in opposition, and they would let him speak first.

Opposition – Mr. David May, who lives on the corner of Francis and Burley Avenue, was present to speak for the people of the neighborhood. Mr. May noted that he has lived in the neighborhood for nearly 75 years and that the neighbors have asked him to speak on their behalf.

Mr. May expressed several concerns about the project. The first being that the plan the neighborhood last saw was not the plan before the Board today. He went on to explain that the neighborhood had last seen a plan with a single 3-story, 24-unit apartment building; and the plan before the Board today was for a 22-unit, 2-story Townhouse project. He noted that he got along well with Mr. Perry and remained neutral about this change but was concerned that the neighborhood did not see the revised plan before today's meeting.

Next, he expressed concern over the loss of the existing park, which the neighborhood had fought for many years to get placed here. He felt that the existing park was nice and noted that some of the neighbors take care of it and help to keep it clean; and the neighborhood has acknowledged the proposed location of the new park and hopes that it will be as nice as their existing park.

In conclusion, Mr. May spoke of traffic concerns. He noted that traffic is much more congested and that it is harder to drive down the street due to more on-street parking. He noted that with the influx of many student rentals in the neighborhood, the character of the neighborhood was changing. He expressed concerns about school buses being able to maneuver on the narrow streets and that their neighborhood was being used as a cut-through to get to Waller Avenue. He asked the Board if they wanted to do a traffic study. He reiterated that the neighborhood concerns were not against Mr. Perry personally, but they were the concerns of the neighborhood overall.

Ms. Meyer asked if the park that's going to be replaced would be the same size.

Mr. May replied that he thought the new park would be smaller, but he didn't have exact figures.

Mr. Griggs clarified that the neighborhood had not seen the current plan for the townhomes, noting that the Board had only seen the current plan for the townhomes. He then asked if the current plan had more units, bedrooms, cars, or parking than the previous plan presented to the neighbors.

Mr. Griggs said that all of the traffic would still come to Burley Avenue; and that both plans put all the traffic on to Burley. Mr. May explained the traffic pattern on Burley Avenue with regard to the two one-way paired streets of Edward and Francis Avenues.

Mr. Griggs again clarified that there was a difference with the traffic pattern Edward and Francis Avenues were made one way. Mr. May said that the neighborhood is used as a cut-through and becomes congested from 4:00 to 6:00 in the afternoon.

Mr. Griggs asked the Division of Traffic Engineering for their opinion.

Mr. Gallimore said that it seemed that this plan had been around for quite a while, noting that this was the first that he had heard of any type of traffic implication. He said he was not familiar with the area, adding that there are a lot of places in town that from 4 to 6:00 is congestion. He said that he could not weigh in on this without having any traffic counts, visiting the site or doing any type of survey of the activity on Burley.

Mr. Griggs asked at what threshold the Planning Commission requires a traffic study.

Mr. Saltee stated that usually there's only a traffic study involved if there's a zone change request and it's expected to generate more than 100 new trips in the peak hour. This particular development did not need a zone change. About 160 townhouses is the threshold for a traffic study to be required; and this is only 22, so it's just a fraction of that.

Mr. May replied that he thinks there should be a study of this before it's approved to satisfy the neighborhood and Mr. Perry, and to see if this is going to be detrimental for our neighborhood. He expressed concern about traffic volumes and parking on the street, parking across the street - the same as they are doing on American Avenue. He went on to express concern regarding overcrowding and the number of people per unit living there.

Mr. Griggs pointed out that one of the variances is to allow for more parking spaces than are required. It was his belief that they're doing all they can to add off-street parking to alleviate the congestion on the street. He said the only thing they're asking to be approved is more parking spaces than the Zoning Ordinances allows.

Mr. May said that the neighborhood was specifically concerned about increased traffic in relation to the neighborhood park. He also was concerned about the maneuverability of buses if the amount of on-street parking increases. He concluded his presentation stating that he was speaking on behalf of neighborhood concerns, and that he would remain friendly with everyone regardless of the outcome of today's hearing.

At this time, Chairman Stout asked to hear the appellant's comments.

Mr. Kahly, who was present on behalf of the appellant, made no comment at this time.

Mr. Jerry Hancock, Director of Lexington's Division of Parks and Recreation, said that David May is unofficially known as the Mayor of that neighborhood. He takes good care of letting everyone know what is happening, and he's been a great advocate for Parks and for his neighborhood for a long time. As the Director of Parks, he said they had been involved in this conversation for nine months. The position of the Division of Parks and Recreation is that the developer came to them and asked if the City would consider swapping some property for the existing park on Burley for a brand new park of comparable size somewhere else. He said that they have now looked at two locations. They have come back, with the assistance of the neighbors, and identified three residential lots that are under contracts. Mr. Perry is willing to buy and level them and construct a new park with all new amenities for about \$115,000, at his expense. So the citizens of Lexington come away with a new park in a time when there is not money to maintain, upgrade and enhance the existing Burley Park, which is fifteen years old. So Parks is very much in favor of this concept and has worked with the neighbors and the developer. He noted that Parks Department has held two public meetings on this proposal, the first of which generated a lot of concern and a lot of questions about the design, the basketball court, the size of the playgrounds, and the type of equipment to be installed. He said they had gone through a half dozen considerations, the last of which was presented to the neighborhood in a

public meeting to which everyone within a quarter of a mile was invited by mail. At the end of the day process, the neighborhood voted 15 to 1 in favor of the new park. The city and citizens win with respect to the development details. Mr. Perry has increased the amount of parking on the site to alleviate some of the parking pressure on the park. Mr. Hancock said that, from their position, Mr. Perry has met the neighborhood's concerns and objections and the City is left with something dramatically better than what was there before. Mr. Hancock said that Parks and Recreation favors this proposal, which will go on the Urban County Council docket the 9th of April.

Mr. Perry explained that the first proposed development that Mr. May had seen was for a three-story apartment building with 24 units. After several meetings with the neighborhood, the Parks Department and his designers, the development proposal changed back to townhomes, and the number was reduced from 24 units to 22 units. He said that he was not building a three-story apartment building - only two stories now. After meeting with the neighborhood association, all the neighbors and the Parks Board, because parking in this area is a big concern for everyone, we are requesting as much parking as we can on this property. He addressed the traffic concerns by stating that 313 Burley Avenue was a Daycare with a maximum occupancy of 60 children. Mr. Perry surmised that the proposed development would have less trips during the peak hour than the previous use. He went on to say that he understood the concerns about the safety of children crossing the street to get to the park and agreed to pay for any type of crosswalks. He said that he and Mr. Hancock had spoken about this, and there is more to this than just building a new park. He said he wants everything to be perfect when it's done.

Chairman Stout said that he believes the proposed use will create more traffic congestion and asked Mr. Perry if he had considered, or will consider, doing a traffic study. Mr. Stout also asked for clarification about whether the neighborhood was presented the current two-story plan or if the three-story plan was the last plan they had seen.

Mr. Perry replied that the townhome development is new. The development has been presented twice to the neighborhood. He said that they (he and the Parks Department) had met with the neighborhood association, regarding what they propose to do with this property; and there has been a change from what was originally proposed, but the neighborhood knows that a development is coming.

Chairman Stout also asked how many entrances and exits there would be relative to this property and what roads would be used relative to where the people will be living.

Mr. Perry replied that the entrances and exits are on Burley Avenue and have not changed from either one of their proposed developments. He said that they might have shifted the new entrances a few feet from the existing; but as Mr. May has commented, there are some pretty nice existing trees on Burley Avenue. He said that he had told Mr. Kahly that he would really like to keep those and asked him to try to design the project around them.

Chairman Stout stated that this was a pretty good project, but many tensions could be eased if there was a clear plan to minimize traffic congestion.

Mr. Kahly said that there are two ways in and out, and each entrance is two-way traffic. In the previous configuration, we had the parking that circled around the apartment building that was centered on the property. In this one we put the residences towards the exterior and tried to locate all the parking to the interior so it would have less of a visual impact. There's a dumpster located in the back of the parking area, away from Burley Avenue. Burley Avenue is 24 feet of asphalt, with a sidewalk on this side of the property, which is a bit larger than a typical sidewalk. The other side of Burley has no sidewalk at all. It was Mr. Kahly's thought that it's used for parking quite a bit. He mentioned that the requested increase in parking was to get as much off-street as possible.

Chairman Stout asked if this is an invitation for people who are visiting this complex or living in the complex to use Edward and Francis Avenues for parking as well. Mr. Kahly replied that he would hope not. Then Mr. Perry said that he didn't think there is enough room as Mr. Kahly had mentioned, they are one-way alleys, and he did not think there was room enough for a person to park.

Mr. Kahly stated that there's a final development plan that has gone to the Planning Commission and been approved. He pointed out that the tree canopy requirements of the Zoning Ordinance will require more trees to be planted than currently exist on the site.

Ms. White said she is assuming this is all rental property, which Mr. Perry verified. Ms. White asked if he was targeting college students. Mr. Perry replied that they are not marketing just to students. Ms. White said that she understands, but this is an area where a lot of students do live. Mr. Perry responded that they are less than a half-mile away from St. Joseph and Lexington Clinic, as well as the University of Kentucky.

Chairman Stout asked if these are two-bedroom condos, three-bedroom condos or what. Mr. Perry replied that they are three- and four-bedroom townhomes.

Mr. Glover said he was curious about the park, noting that Mr. Hancock had said that there's going to be a new park from this proposal. Mr. Hancock replied that that was the case, and Mr. Glover asked where it would be and how close it would be to this property.

Mr. Hancock replied that it's directly across Burley Avenue from the proposed townhome complex.

Mr. Kahly added that there are three properties, comprising about .6 acres or so; and the existing park is about .63 acres. It's almost an exact size swap, and the replacement park is directly across the street.

Chairman Stout asked if the new park would have off-street parking. Mr. Perry said no, there will not be, as there is none in the existing park. Mr. Stout asked where the people will park. Mr. Perry replied that people will walk to this park; this is a neighborhood park with a couple of small playground areas. This is not a destination; people will not get a ride to this park. It's meant to serve the immediate neighborhood.

Mr. Glover said that he is interested in parks and asked if this is going to be a private park, if it is going to be deeded to the City, or will it be maintained privately. He asked if Mr. Hancock knows how this works. Mr. Hancock replied that this will become LFUCG property. He said they are charging Mr. Perry with the obligation to buy those homes, level them, build the park, and "give us the keys" before he does anything to disturb the existing park. So once the new park is built to Parks specs and turned over to the LFUCG, he'll be allowed to begin his development. It will become City property, as is the existing park.

Mr. Glover replied that the Parks Department doesn't have the authority to approve the development, just the authority to approve the park. Mr. Hancock said that is correct. Mr. Glover asked what happens if they approve the development and the park falls through. Mr. Hancock replied that Mr. Perry was going to give them enough money in a surety to ensure that everything happens before they sign the agreement or ask the Council to do so on the 9th. Therefore, he will be obligated to complete the project regardless of what happens across the street.

Mr. Emmons added that he had reviewed and presented this plan to the Planning Commission as an Infill and Redevelopment Plan. The Planning Commission approved this plan with a condition that the developer document the ownership of Burley park prior certification of the plan which would allow them the ability to get building permits. He will not be allowed to own the land where the existing park is located until the new park is built and, as Mr. Hancock said, has "given the keys over to the city". He said that the Planning Commission condition of approval will guarantee that the park transfer will go through before Mr. Perry is allowed to pull any building permits on current LFUCG property.

Mr. May stated that the neighborhood's biggest concern is the traffic problem and when this thing was going to come into effect. We knew that when Mr. Perry built the park, when he shoveled his last shovel of dirt he took over, if he purchases the park property, but he's got to purchase the property across the street, the three residence that's involved in it. I don't think anyone realizes that it has to be bought beforehand and okayed to be cleaned up. The house in the middle has asbestos shingles on it and that's a big concern. And there are a few things that we'd like to have straightened out before turning our kids and great grandbabies loose over in a park that I'm concerned may have contamination.

Mr. Perry reiterated his commitment to provide any necessary street signage or crosswalk improvements. He noted that during the neighborhood meetings he learned that there was a deaf child in the neighborhood and would advocate street signage alerting drivers to use additional caution in this neighborhood.

Mr. Hancock confirmed that it was also the desire of the Parks Department to work with the Division of Traffic Engineering and the developer to ensure that everything that can be done to increase safety for the children with respect to traffic in the area will be done. He noted that common traffic calming devices, such as speed

humps, may not be a valid solution in this case because of the need to service the neighborhood with buses, garbage trucks, and possibly snow plows; but measures such as signage and safe crosswalk designs are quite feasible.

Ms. Meyer questioned whether speed humps would be considered in this case.

Mr. Gallimore replied that the installation of speed humps are generally project-driven at the request of the neighborhood. The City currently does not install speed humps anywhere in Lexington. In the past the government did have a matching funds program that was based on income levels of the various neighborhoods. However, those funds are no longer available. He did note that if a neighborhood did want to install speed humps, the Division of Traffic Engineering would be happy to work with them and evaluate any proposal.

Ms. Meyer asked if that is something the developer (Mr. Perry) might consider doing.

Mr. Perry answered in the affirmative, noting that he had brought up that suggestion in one of their meetings and found out that there was an issue with the school buses. It was his understanding that buses had trouble navigating a speed hump due to the clearance of the bottom step. He also noted his understanding that Burley Avenue is an important street for the bus routes in order to service the neighborhood.

Mr. Hancock added that speed humps are also an issue with snow plows.

Mr. Perry stated they would discuss the possibility of placing a stop sign on Burley Avenue (at the Edward Avenue intersection) with the Division of Traffic Engineering.

Ms. Meyer asked if the design of a speed hump can be modified to accommodate school buses.

Mr. Perry replied that he was willing to put in appropriate traffic calming devices – either speed humps, crosswalks, or stop signs – as the situation warranted and as approved by the City. He further noted his desire to provide a safe new park, for his new tenants, as well as for the neighborhood.

Mr. Hancock said that a stop intersection (i.e., stop signs) may be the best solution to calm traffic on Burley Avenue.

Ms. Meyer added that it should be well marked with crosswalks and should be very visible.

Mr. Hancock that it is not a well attended park today for a variety of reasons. It will become more popular, and Parks will do everything possible to make it visually apparent that there's a "kid centric" thing ahead, so drivers should slow down.

Mr. Griggs expressed his concern regarding asbestos and lead paint. He surmised that there is a process to ensure that the City will not accept the new park on contaminated property.

Mr. Hancock replied affirmatively and said that all paperwork will be signed appropriately and adequately before a public amenity is built.

Mr. Griggs said it would be nice for the neighborhood to know that those things are considered.

Action – A motion was made by Mr. Glover, seconded by Ms. White, and carried unanimously (Moore, Stumbo absent) to approve **V-2012-19: STEVE PERRY** (appeals for variances to: 1) reduce the required project exterior yard from 20 feet to 6 feet; 2) reduce the minimum required open space from 20% to 18%; and 3) to increase the maximum allowable parking from 50 to 60 spaces in a High Density Apartment (R-4) zone, within the defined Infill & Redevelopment Area, on properties located at 301 and 313 Burley Avenue) as recommended by the staff and subject to the two conditions as outlined by the staff.

D. **Conditional Use Appeals**

None Remaining

E. **Administrative Review**

None Remaining

IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time. There were none.

V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time.

A. Mr. Emmons updated the Board that the staff has revised the standard notice letter as requested by the Board.

Ms. White asked about the hours of required training for the Board. Mr. Emmons replied that he did not have the numbers today but would get them to the Board members.

VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be April 27, 2012.

VII. **ADJOURNMENT** - Since there was no further business, the Chairman declared the meeting adjourned 2:39 p.m.

Louis Stout, Chairman

James Griggs, Secretary